Waltham Police Department

"Protecting and Serving with Pride"

Keith D. MacPherson
Chief of Police

Internal Affairs- Investigation Disposition

Form 52-6
Revised 12/15
52.2.5, 52.2.8

To: Chief MacPherson

From: Captain Champeon

Subject: Citizen Complaint

Date:

Complaint(s):

Officer(s): Sgt. Callahan

2019 - 03

DISPOSITION

- ☐ **Proper Conduct**
- ☐ **Improper Conduct**
- ☐ **Inadequate Policy**
- ☑ **Insufficient Evidence**
- ☐ **Unfounded Complaint**

Comments:
See enclosed investigative report.

Reviewed Keith D. MacPherson
(Chief Keith MacPherson)

Date 9/23/19

155 Lexington Street, Waltham, MA 02452-4685 Tel: (781) 314.3500 Fax: (781) 314.3506

CONFIDENTIAL

Internal Affairs Investigation

Complainant: [redacted]

[redacted]

Phone #[redacted]

Investigator: Lieutenant Timothy Maher

Professional Standards Unit

August 12, 2019

CONFIDENTIAL

On Tuesday August 6, 2019 I was advised by Captain Rodley that I would be being assigned a citizen complaint to investigate. I was also advised that the Officer that was the subject of complaint was Sergeant Jeff Callahan. Captain Rodley subsequently forwarded to me an email that the complainant – [redacted] had sent to the Mayor's Office. A copy of the complaint's email will be placed into file # 1 so that the actual complaint and communication between [redacted] and Mayor's office can be reviewed if need be. In Additional – I have copied the complainant's email below so that it can be read while reading this I.A. report

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[redacted] email complaint –

-----Original Message-----
From: [redacted] **[mailto:**[redacted]**]**
Sent: Monday, August 05, 2019 10:00 PM
To: Monaghan, Julie A. <jamonaghan@city.waltham.ma.us>
Subject: [Waltham MA] Citizen - Police Interaction (Sent by [redacted]**,** [redacted]**)**

Hello jamonaghan,

[redacted] **(**[redacted]**) has sent you a message via your contact form (https://www.city.waltham.ma.us/users/jamonaghan/contact) at Waltham MA.**

If you don't want to receive such e-mails, you can change your settings at https://www.city.waltham.ma.us/user/153/edit.

Message:

Dear Julie,

I work at a company in the office complex of [redacted] **in Waltham.**
I typically commute to work by bicycle from Brookline where I live. This afternoon around 5:15 pm I was exiting the driveway of 400 Totten Pond Road office park to go onto the actual Totten Pond Road. As every day, a Waltham police offer was stationed there to stop traffic for exiting vehicles from the office park, because due to the lack of a traffic light, it is otherwise virtually impossible to leave the office park in rush hour. This police office would stop traffic to let cars leave the office park, but when I reached the road, he just stood by the road not doing anything. So I raised my arm and asked him why he wouldn't help me get onto the road, like he did for cars. His response astounded me: "Because you are not a car and because you cyclists ignore all the traffic laws, run red lights, ignore police officers. I am not doing it for bicycles anymore." He then acknowledged that I had indeed stopped at the road, as I was supposed to, and that I had not violated any traffic laws. His refusal to do his job and help a bicyclist get onto the road was purely "principle-based".

The behavior of this police officer deeply concerns me. By what right can he chose to serve some of his constituents (car drivers) and not others (bicyclists)? He basically told me straight into my face that

he would not be doing his job for me. I am still flabbergasted by this behavior that I have never encountered before. But it is behavior like this that erodes public trust into institutions like the police.

I would appreciate if you could discuss this incident with both the mayor as well as the head of the Waltham police and ensure that the police actually serves all its constituents, regardless of personal preferences.

With best regards,

[redacted]

Investigators Note: This complaint is based on an encounter [redacted] alleges to have had on Monday August 5, 2019 at 1715 hours at the entrance / exit to [redacted] 400 Totten Pond Road Waltham. Sergeant Jeff Callahan was on a paid police traffic detail at this location – hours of detail according to department detail sheets are 1600 to 1900 hours.

After reviewing this complaint by [redacted] I made arraignments to meet with Sergeant Callahan at the Carter Street Police Substation on August 7, 2019. I advised Sgt. Callahan that I was assigned to investigate a complaint made against him by an employee at 400 Totten Pond Road. I advised Sgt. Callahan that I was in possession of an email which the complainant had sent to Waltham City Hall Mayor's office. The purpose of this first interview with Sgt. Callahan was to confirm that he was in fact on a paid police detail at this location on this date and whether he recalled having an encounter with a bicyclist which had come down the driveway from 400 Totten Pond Road. Sgt. Callahan confirmed that he had in fact been on this police detail and that he did recall having an encounter with a bicyclist. Sgt. Callahan commented that he had an idea this person would make a complaint against him. **Investigators Note:** When I interviewed [redacted] he told me he advised the Police Officer (Sgt. Callahan) that he would be making a complaint via email. I read over the complaint's email complaint to Sgt. Callahan and then asked him what if could tell me about the encounter. Sgt. Callahan stated that while on detail at driveway to 400 Totten Pond Road a bicyclist came down the driveway of the property stopping at the exit. Sgt. Callahan stated that the bicyclist after stopping waved his hand / arm in the air gesturing to Sgt. Callahan asking for assistance exiting driveway (wanting to turn right onto Totten Pond Road). Sgt. Callahan advised me that when he does this detail he generally lets traffic back up two or three cars anyway before stopping traffic in both directions on Totten Pond Road and that in this case once a couple cars had backed up behind the bicyclist he would have stopped traffic for everyone. Sgt. Callahan stated that once a couple cars were in line waiting to exit he did in fact stop traffic but was unsure as to whether the bicyclist went on his own prior to traffic being stopped. Sergeant Callahan stated that the bicyclist, before driving off, told Sgt. Callahan that he would be making a complaint to the city via email. Additionally Sgt. Callahan advised me that he did not believe he was there to regulate bicyclist traffic and that he didn't have any enforcement powers over bicyclists. Sgt. Callahan stated that there are no "Bicycle lane markings" there and he questioned whether a bicycle exiting this driveway wanting to turn right (east bound) should use the side walk and grass to travel. Sgt. Callahan advised me that he was unsure as to his responsibilities with the bicyclists on the detail. **Investigators Note:** I viewed the area in question by 400 Totten Pond Road. There is a newly made side walk on the east bound side of Totten

Pond Road starting at the driveway of 400 Totten Pond Road and going appx. 100 feet easterly before it ends and then you have only grass after that. The newly made sidewalk leads to and ends with a new cross walk that will allow pedestrians to cross street (Totten Pond Road). I also noted that this sidewalk which is 4 feet wide has a couple poles in the middle of it as you head easterly. This sidewalk would not be an option for a bicyclists. Even if a bicycle went on the sidewalk and maneuvered around a couple poles it would be forced onto grass appx. 100 feet easterly. I took several photos of this area and have placed them in file # 8. As far as there being no "Bicycle lane markings" here that is correct which simply means a bicyclist would be allowed to travel easterly on road way in same direction as traffic. Sgt. Callahan advised me that often times whether it be a bicyclist or a car coming down the driveway from 400 Totten Pond Road that they are able to turn right on to Totten Pond Road easier and faster on their own as opposed to him assisting them. After obtaining this information from Sgt. Callahan I ended the interview with the intention of conducting a follow up interview with additional questions after I had opportunity to speak with [redacted].

On August 7, 2019 I sent [redacted] an email introducing myself and requesting to meet with him to discuss the complainant he had made. We made arraignments to meet in the lobby of 400 Totten Pond Road at 0830 hours on Thursday August 8, 2019. **Investigators Note:** On the morning of Thursday August 8, 2019 just after 0800 hours I received an email from [redacted] advising that me that he was running late because he had gotten a flat tire on his bicycle while riding to work ([redacted] rides bicycle from [redacted] to his Waltham place of employment). I assured [redacted] that I would await his arrival and that I was more than willing to reschedule if he wanted to do so. We agreed to keep the meeting and we subsequently meet here at appx 0855 hours. I advised [redacted] that I had reviewed the email complaint that he had sent to the Mayor's office I wanted him to have the opportunity to go over the matter with me in person. Because I wanted to get an idea where [redacted] was coming from and what his demeanor was going to be like I first asked him what he wanted to see come out of this complaint. [redacted] stated that he hoped to have our Police officers understand bicyclist's safety is extremely important and that in cases like this one here at 400 Totten Pond Road that the Police Officer on detail needs to provide bicyclists with the same courtesy and assistance as they do cars exiting the driveway. [redacted] stated that he stood by the email complaint he had made and that the facts occurred as he reported in the email and that in particular, the officer refused to help him exit the driveway. I asked [redacted] whether he noticed any cars backing up behind him and prior to turning right on Totten Pond Road exiting the driveway on his own and he stated he could not recall [redacted] and I did also spend some time talking about bicycle safety and the fact that he alternates his source of transportation to work sometimes riding his bicycle and sometimes driving a car. We ended our meeting with me advising [redacted] that I would be doing more follow up and that I would get back to him as soon as investigation was complete.

After having spoken with [redacted] I arranged to meet again with Sgt. Callahan for a follow up interview. I meet with Sgt. Callahan on Saturday August 10, 2019 at the Carter Street Substation. In speaking with Sgt. Callahan I advised him that I had met with [redacted] and that [redacted] stood by the email complaint he had sent to Waltham City Hall Mayor's Office. I advised Sgt. Callahan that as [redacted] reported in his complaint that he reported that Sgt. Callahan refused to offer him assistance in exiting the driveway. I asked Sgt. Callahan if this were correct. Sgt. Callahan stated again what he had told me in the first interview that he didn't feel he was there to regulate bicycle traffic – Sgt. Callahan did not disagree with the statements made by [redacted] nor did he deny telling [redacted] he was not going to assist him but did state that [redacted] statements were "not accurate". Sgt. Callahan went on to say that when speaking with [redacted] he was trying to explain to him that he was there for motorists and that often times the bicycles come and go without any assistance. Sgt. Callahan also stated that he could not recall exactly what he had said to [redacted] Sgt. Callahan stated that perhaps something was lost in "translation" – as [redacted] is German and perhaps he misunderstood what Sgt. Callahan was trying to explain to him. **In ending the interview with Sgt. Callahan he did state "tell him I'm sorry" and that I am more than willing to assist him in exiting the driveway in the future.**

Conclusions: In speaking with Sgt. Callahan it appears that he **did not** assist [redacted] in exiting the driveway on August 5, 2019 – Sgt. Callahan acknowledged that [redacted] asked for and gestured for assistance and stated that he didn't believe he was there to assist bicyclists while at the same time questioned what his responsibilities were with bicyclists. [redacted] an employee at the 400 Totten Pond Road complex , whom often travels to work on a bicycle, believed he was entitled to assistance from the Police Officer on detail in safely exiting the driveway to turn right (easterly) on to the roadway (Totten Pond Road) whether he be operating a bicycle or a car. I cannot confirm that Sgt. Callahan did or didn't say to [redacted] exactly what [redacted] alleges Sgt. Callahan said to him. However from Sgt. Callahan's own admissions to me (including his statement telling me to "tell him I'm sorry I will help in the future") I feel it can be sustained that he didn't assist [redacted] in exiting driveway on August 5, 2019.

Investigators Note: Massachusetts Bicycle laws fall under Mass General Laws – Chapter 85. Chapter 85 Sec 11 B allows bicycles to use public roadways (noting that they must obey all traffic laws and regulations). Mass M/V law also indicates that a Police Officer can issue civil citations to bicyclist observed violating a traffic law or regulation. I am noting this bicycle law information here so as to make it clear that in this case [redacted] certainly was entitled to operate his bicycle on Totten Pond Road and that being said, clearly was entitled to assistance from the Police Officer on detail at 400 Totten Pond Road. Additionally, Police training would imply a Police Officer on detail assist not only cars but also pedestrians and bicyclists while on detail. Chapter 85 of Mass laws also gives a Police Officer the ability to enforce bicycle laws. **Chapter 85 of Mass General Laws would be one area that Sgt. Callahan will want to look at and understand.**

While speaking with Sgt. Callahan he had made mention that often times cars and bicyclist enter or exit on their own and feel safe doing so and that perhaps this is even safer and faster for some especially those turning right onto Totten Pond Road. Part of my conclusion drawn here is that when a motorist, pedestrian or bicyclist makes a request for assistance in exiting the driveway assistance from the Police Officer would become necessary as the person asking for assistance does not feel safe in exiting on their own.

Perhaps this is a "bicycle law training issue", "traffic control issue" or perhaps it's a "common sense training issue". Based on my conversation with Sgt. Callahan I do believe he now understands the importance assisting everyone that enters and exits a Property that is paying for a detail officer to assist its employees – whether they be in a car, on a bicycle or on foot.

Copies of all email communications between myself and [redacted] have been placed into file # 3. As noted in my last email to [redacted] on August 9, 2019 I advised him that I would be in touch with him once this investigation is completed and review. That being said once this report is reviewed [redacted] will need to be contacted – he would prefer an email as opposed to a phone call. Should our department wish for me to make the final communication to [redacted] will do so once ask to do so.

In conducting investigation I did check the area for any cameras but was unable to locate any.

I took a number of **photos of the entrance / exit to 400 Totten Pond Road** should anyone reviewing this report want to see the location. Pictures have been placed in file # 2.

Respectfully,

Lt. Timothy Maher

Lieutenant Timothy Maher

Professional Standards Unit

August 12, 2019

Maher, Timothy

From: [redacted]
Sent: Thursday, August 29, 2019 3:39 PM
To: Maher, Timothy
Subject: Re: Waltham Police Department - Professional Standards Unit

Dear Tim,

Thank you for this update. I appreciate your following up on this. Based on our discussion a few weeks ago, I would still like to recommend that ideally the Waltham police incorporates the rights of bicyclists better into their training for all police officers (not just the one individual in question) to prevent something from this reoccurring.

With best regards,
[redacted]

On Wed, Aug 28, 2019 at 9:42 PM Maher, Timothy <tmaher@police.waltham.ma.us> wrote:

[redacted]

Thank you for being patient while I conducted an investigation into your complaint. In reviewing your complaint and conducting an investigation I have substantiated your complaint. After forwarding my findings to our Police Administration they too have substantiated your complaint. The Police officer whom was the subject of your complaint [redacted]

I know you mentioned that an email was the best form of communication for you – however I would be more than willing to speak with you again should you wish to talk.

Sincerely,

Lieutenant Tim Maher

Professional Standards Unit

Waltham Police Department

Email: tmaher@police.waltham.ma.us